Shahrul Pitri bin Jusoh v Public Prosecutor and other appeals

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NOS A-05(M)-263–08 OF 2020, A-05(SH)-264–08 OF 2020, A-05(SH)-265–08 OF 2020, A-05(SH)-266–08 OF 2020 AND A-05(SH)-267–08 OF 2020

VAZEER ALAM, COLLIN SEQUERAH AND AZMI ARIFFIN JJCA

29 MARCH 2024

Criminal Procedure — Appeal — Appeal against conviction and sentence — Murder — Defence of intoxication — Defence of provocation — Evidential value of unsworn statement from dock — Appellant was convicted on three counts of murder under s 302 of the Penal Code and sentenced to death — Whether High Court judge was correct in finding that prima facie case was proven — Whether High Court judge was correct in giving very little weight to appellant's unsworn statement from dock — Whether High Court judge was correct in rejecting defence of intoxication and defence of provocation — Whether appellant failed to prove medical insanity and legal insanity — Whether High Court judge was correct in finding that provocation was not grave and sudden — Whether High Court judge committed appealable error that warranted appellate intervention — Whether death sentence should be set aside and replaced with sentence of 30 to 40 years imprisonment pursuant to the Abolition of Mandatory Death Penalty Act 2023 — Criminal Procedure Code s 342 — Penal Code ss 85(2)(b), 300(a) & 302

This was an appeal by the appellant against the decision of the High Court in convicting the appellant on three counts of murder under s 302 of the Penal Code ('the PC') and in sentencing him to death by hanging. The three deceased in this case were three siblings who were also the children of SP17 and SP19. SP19 was the appellant's colleague at work. The witnesses testified that on the day of the incident, the appellant, while holding a parang, came to SP17's house in search of SP19 and in the process of searching for SP19, the appellant hit the three deceased with parang which caused the death of the deceased. According to SP16 who performed the postmortem on the three deceased, the three deceased died due to the injuries sustained. The High Court judge ('the HCJ') found that prima facie case was proven and called the appellant to enter his defence. The appellant elected to give an unsworn statement from the dock and called SD2 as a witness. SD2 was the consultant forensic psychiatrist who was tasked to observe the appellant at the Hospital Bahagia Ulu Kinta pursuant to the court's order under s 342 of the Criminal Procedure Code. The thrust of the appellant's defence was that he did not remember anything after taking the drug given by SP19 and later fell asleep. It was only after he woke up that he was told that he had killed the three deceased. The defence raised by the appellant was insanity due to substance intoxication. In this regard, the appellant argued

that if his blood samples had been taken within the 'window period', methamphetamine, eramine and nimetazepam would have been detected. The appellant also raised the defence of provocation whereby the appellant argued that he had been provoked by SP19: (a) when SP19 purportedly spread rumours that the appellant was having an incestuous relationship with his mother; (b) when SP19 cheated the appellant of wages due to the appellant; and (c) when SP19 told the appellant that SP19 had unnatural sex with SP17. The HCJ rejected the appellant's defences and subsequently convicted and sentenced the appellant accordingly. Aggrieved by the decision, the appellant filed the present appeal.

Held, upholding the conviction and dismissing the appeal against conviction and sentence:

(1) The HCJ had meticulously applied the correct legal principles in relation to the ingredients of the offence to the facts of the case based upon the evidence adduced by the prosecution. With regard to the identity of the deceased persons, the HCJ had alluded to the evidence of SP16 and SP19. As for the second ingredient, the HCJ concluded that from the evidence of SP16, he was satisfied that the three deceased died due to the injuries sustained. In relation to the third ingredient, the HCJ found that the direct evidence and circumstantial evidence pointed to the unmistakable fact that it was the appellant who had caused the injuries on each of the three deceased which led to their deaths. With respect to the fourth element, the HCJ observed that the injuries on all the deceased were at the vital parts of the body and based on medical evidence, the appellant had used considerable force to inflict these injuries. The HCJ had also considered the words used by the appellant at the material time. From the evidence, the HCJ concluded that the appellant had, by his actions, the intention to cause death of the three deceased under s 300(a) of the PC. The HCJ then found that prima facie case was proven. Upon a consideration of all the evidence and with the benefit of audio-visual advantage accorded to the HCJ, the court found that the HCJ was correct in his finding that the prosecution had successfully made out a prima facie case against the appellant in respect of all the charges under s 302 of the PC (see paras 158–160, 164, 181, 185, 188, 190–193 & 206).

(2) Upon hearing the statement of the appellant from the dock, the HCJ proceeded to evaluate the said evidence. The HCJ concluded that based upon the evidence, he gave very little weight to the appellant's unsworn statement. The HCJ had correctly recognised the evidential value of an unsworn statement and referred to the case of *Rewang bin Tempe v Public Prosecutor* [2016] 3 MLJ 586 (see paras 235 & 274).

(3) The HCJ had considered the behaviour and conduct of the appellant in relation to the defence of intoxication raised by the appellant. The HCJ found that the cumulative effect of the appellant's conduct prior to, during and after the incidents pointed to him knowing the nature of his actions and that it was wrong. The HCJ had alluded to the testimony of SD2 that: (a) the appellant was oriented to time, place and person; (b) the appellant's memory was intact; (c) the appellant was able to recall details pertaining to the offences 'quite clearly'; and (d) the appellant's motor coordination was not like one who was intoxicated. Based on SD2's evidence, the HCJ concluded that the appellant did not experience any substance induced disorder and did not experience hallucinations or delusions in relation to substance abuse. The court agreed with the HCJ's finding and found that the appellant failed to raise medical insanity and legal insanity. The court further found that the appellant had failed to establish the defence of intoxication under sub-s 85(2)(b) of the PC on balance of probabilities (see paras 244, 256, 264–265, 267, 269 & 271).

(4) The HCJ also considered the defence of provocation and found that the defence of grave and sudden provocation was not available to the appellant in the circumstances of the case as there was no evidence that the provocation was 'grave and sudden'. The court agreed with the findings of the HCJ (see paras 201–202 & 272).

(5) Having perused the evidence from the notes of proceedings available and having considered the HCJ's grounds of judgment, the court found that the HCJ had not committed any appealable error to warrant any interference with the conviction. In all the circumstances of the case, the court found the conviction in respect of all the charges against the appellant under s 302 of the PC was safe (see para 279).

(6) The court considered the mitigating factors advanced by the learned counsel for the defence and the submission that the death penalty should be set aside and replaced with a term of imprisonment of 30 to 40 years following the amendment pursuant to the Abolition of Mandatory Death Penalty Act 2023. The court however declined to exercise its discretion in light of the fact that the lives of three young children had been cruelly cut short by the vicious and savage act of the appellant. In this respect, the court considered the public interest element that the lives of three innocent children were extinguished in such a cruel fashion. The court therefore found that there was no reasonable ground to exercise the court's discretion and accordingly declined to do so in the circumstances of the case (see paras 282–285).

[Bahasa Malaysia summary

Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Tinggi yang mensabitkan perayu atas tiga pertuduhan membunuh di bawah s 302 Kanun Keseksaan ('KK') dan menjatuhkan hukuman gantung sampai mati. Ketiga-tiga si mati dalam kes ini adalah tiga beradik yang juga anak-anak kepada SP17 dan SP19. SP19 adalah rakan sekerja perayu di tempat kerja. Saksi-saksi memberi keterangan bahawa pada hari kejadian perayu sambil memegang parang telah datang ke rumah SP17 untuk mencari SP19 dan dalam proses mencari SP19, perayu telah memukul ketiga-tiga si mati dengan parang sehingga menyebabkan kematian ketiga-tiga si mati. Menurut SP16 yang melakukan bedah siasat ke atas ketiga-tiga si mati, mereka meninggal dunia akibat kecederaan yang dialami. Hakim Mahkamah Tinggi ('HMT') mendapati bahawa kes prima facie telah dibuktikan dan memanggil perayu untuk membela diri. Perayu memilih untuk memberikan pernyataan tidak bersumpah daripada kandang tertuduh dan memanggil SD2 sebagai saksi. SD2 adalah perunding psikiatri forensik yang ditugaskan untuk menjalankan pemerhatian ke atas perayu di Hospital Bahagia Ulu Kinta menurut perintah mahkamah di bawah s 342 Kanun Tatacara Jenayah. Teras pembelaan perayu ialah dia tidak ingat apa-apa selepas mengambil dadah yang diberikan SP19 dan kemudiannya tertidur. Selepas dia tersedar barulah dia diberitahu bahawa dia telah membunuh ketiga-tiga si mati tersebut. Pembelaan yang dibangkitkan oleh perayu adalah ketidakwarasan kerana mengambil dadah. Berhubung dengan ini, perayu berhujah bahawa sekiranya sampel darahnya telah diambil dalam tempoh 'window period', methamphetamine, eramine dan nimetazepam akan dapat dikesan. Perayu juga membangkitkan pembelaan bangkitan marah di mana perayu berhujah bahawa SP19 telah membangkitkan kemarahannya: (a) apabila SP19 kononnya menyebarkan khabar angin bahawa perayu mempunyai hubungan sumbang mahram dengan ibunya; (b) apabila SP19 menipu perayu berkaitan gaji perayu; dan (c) apabila SP19 memberitahu perayu bahawa SP19 melakukan hubungan seks luar tabii dengan SP17. Hakim Mahkamah Tinggi menolak pembelaan-pembelaan perayu dan seterusnya mensabitkan dan menghukum perayu dengan sewajarnya. Terkilan dengan keputusan tersebut, perayu memfailkan rayuan semasa.

Diputuskan, mengekalkan sabitan dan menolak rayuan terhadap sabitan dan hukuman:

(1) Hakim Mahkamah Tinggi telah menggunakan prinsip undang-undang yang betul dengan teliti berhubung unsur-unsur kesalahan kepada fakta kes berdasarkan keterangan yang dikemukakan oleh pihak pendakwaan. Berkenaan dengan identiti si mati, HMT telah merujuk kepada keterangan SP16 dan SP19. Bagi unsur kedua pula, HMT merumuskan bahawa daripada keterangan SP16, beliau berpuas hati bahawa ketiga-tiga si mati meninggal dunia akibat kecederaan yang dialami.

A Berhubung dengan unsur ketiga, HMT mendapati bahawa keterangan langsung dan keterangan mengikut keadaan menunjukkan fakta yang tidak dapat disangkal bahawa perayulah yang telah menyebabkan kecederaan pada setiap daripada tiga si mati yang membawa kepada kematian mereka. Berkenaan dengan unsur keempat, HMT mendapati B bahawa kecederaan-kecederaan pada semua si mati adalah di bahagian penting badan dan berdasarkan keterangan perubatan, perayu telah menggunakan tenaga yang agak kuat untuk menyebabkan kecederaan-kecederaan ini. Hakim Mahkamah Tinggi juga telah mempertimbangkan perkataan-perkataan yang digunakan oleh perayu C pada masa yang material. Daripada keterangan-keterangan tersebut, HMT membuat kesimpulan bahawa perayu mempunyai, melalui kelakuannya, niat untuk menyebabkan kematian ketiga-tiga si mati di bawah s 300(a) KK. Hakim Mahkamah Tinggi kemudiannya mendapati kes prima facie telah dibuktikan. Setelah menimbangkan D semua keterangan dan dengan manfaat kelebihan audio-visual yang diberikan kepada HMT, mahkamah mendapati bahawa HMT adalah betul dalam dapatannya bahawa pihak pendakwaan telah berjaya membuktikan kes prima facie terhadap perayu berkenaan dengan semua pertuduhan di bawah s 302 KK (lihat perenggan 158–160, 164, 181, E 185, 188, 190–193 & 206).

(2) Setelah mendengar pernyataan perayu dari kandang tertuduh, HMT meneruskan dengan menilai keterangan tersebut. Hakim Mahkamah Tinggi menyimpulkan bahawa berdasarkan keterangan, beliau hanya F memberikan pertimbangan yang sedikit kepada pernyataan tidak bersumpah perayu. Hakim Mahkamah Tinggi telah mengiktiraf dengan betul nilai keterangan bagi suatu pernyataan tidak bersumpah dan merujuk kepada kes *Rewang bin Tempe v Public Prosecutor* [2016] 3 MLJ 586 (lihat perenggan 235 & 274).

G (3) Hakim Mahkamah Tinggi telah mempertimbangkan tingkah laku dan kelakuan perayu berhubung dengan pembelaan mabuk yang dibangkitkan oleh perayu. Hakim Mahkamah Tinggi mendapati bahawa kesan kumulatif kelakuan perayu sebelum, semasa dan selepas kejadian menunjukkan dia mengetahui sifat tindakannya dan bahawa ia H adalah salah. Hakim Mahkamah Tinggi telah merujuk kepada keterangan SD2 bahawa: (a) perayu berorientasikan masa, tempat dan orang; (b) ingatan perayu adalah utuh; (c) perayu dapat mengingati butir-butir yang berkaitan dengan kesalahan dengan 'agak jelas'; dan (d) koordinasi motor perayu tidak seperti orang yang mabuk. I Berdasarkan keterangan SD2, HMT membuat kesimpulan bahawa perayu tidak mengalami apa-apa gangguan akibat dadah dan tidak mengalami halusinasi atau khayalan berhubung dengan penyalahgunaan dadah. Mahkamah bersetuju dengan dapatan HMT dan mendapati perayu gagal menimbulkan pembelaan tidak sempurna

akal dari segi perubatan dan tidak sempurna akal dari segi undang-undang. Mahkamah selanjutnya mendapati perayu telah gagal membuktikan pembelaan mabuk di bawah sub-s 85(2)(b) KK di atas imbangan kebarangkalian (lihat perenggan 244, 256, 264–265, 267, 269 & 271).

(4) Hakim Mahkamah Tinggi juga mempertimbangkan pembelaan bangkitan marah dan mendapati pembelaan bangkitan marah yang besar dan mengejut tidak tersedia kepada perayu dalam keadaan kes kerana tidak terdapat keterangan bahawa bangkitan marah tersebut adalah 'besar dan mengejut'. Mahkamah bersetuju dengan dapatan HMT (lihat perenggan 201–202 & 272).

(5) Setelah meneliti keterangan daripada nota prosiding yang ada dan setelah mempertimbangkan alasan penghakiman HMT, mahkamah mendapati bahawa HMT tidak melakukan apa-apa kekhilafan yang boleh dirayu untuk mewajarkan apa-apa gangguan terhadap sabitan. Dalam semua keadaan kes, mahkamah mendapati bahawa sabitan berkenaan dengan semua pertuduhan terhadap perayu di bawah s 302 KK adalah selamat (lihat perenggan 279).

(6) Mahkamah mempertimbangkan faktor-faktor meringankan hukuman yang dikemukakan oleh peguambela terpelajar bagi pihak pembelaan dan hujahan bahawa hukuman mati perlu diketepikan dan digantikan dengan tempoh penjara 30 hingga 40 tahun berikutan pindaan di bawah Akta Pemansuhan Hukuman Mati Mandatori 2023. Mahkamah bagaimanapun enggan menggunakan budi bicaranya memandangkan hakikat bahawa nyawa tiga kanak-kanak kecil telah dipendekkan dengan kejam oleh perbuatan ganas dan biadab perayu. Dalam hal ini, mahkamah mengambil kira elemen kepentingan awam bahawa nyawa tiga kanak-kanak yang tidak bersalah telah dikorbankan dengan cara yang begitu kejam. Oleh itu mahkamah mendapati bahawa tiada alasan yang munasabah untuk menggunakan budi bicara mahkamah dan dengan itu menolak untuk berbuat demikian dalam keadaan kes (lihat perenggan 282–285).]

Cases referred to

Mahadzir bin Yusof & Anor v PP [2011] 1 MLJ 297; [2013] 9 CLJ 287, CA (refd)

Rewang bin Tempe v PP [2016] 3 MLJ 586; [2016] 1 LNS 223, CA (refd)

Sukhvinder Singh Naldip Singh v PP & another appeal [2014] 5 CLJ 574, CA (refd)

Legislation referred to

Abolition of Mandatory Death Penalty Act 2023

Criminal Procedure Code s 342

A Evidence of Child Act 2007 ss 3, 9
Penal Code ss 84, 84, 85(2)(b), 86(2), 299, 300(a), (b), (c), (d), 302, 307, 324

Rajit Singh a/l Tara Singh (with Robin Lim) (Rajit Gill & Co) for the appellant.
B *Fauziah bt Daud (Attorney General's Chambers) for the respondent.*

Collin Sequerah JCA:

INTRODUCTION

C

[1] The appellant abovenamed was charged with seven charges three of which were under s 302 of the Penal Code, three charges were under s 324 of the Penal Code and one charge under s 307 of the Penal Code.

D **[2]** The charges under s 302 Penal Code were in respect of the following deceased persons:

(a) Nur Zia Fasilah bt Mohd Fadzil;

(b) Muhammad Firash Zafril bin Mohd Fadzil; and

E

(c) Muhammad Faqih Zahirul Haq bin Mohd Fadzil.

[3] The charges against the appellant under s 302 of the Penal Code read as follows:

F

S 302 Penal Code (AA-45B-2-02/2019)

First Charge

Bahawa kamu pada 17/5/2015, antara jam 2:30 petang hingga 2:40 petang, di dalam rumah beralamat Rumah Projek Bantuan Bina Rumah Majlis Agama Islam dan Adat Melayu Perak di Kampung Sungai Hj Muhammad, Selekoh di dalam Daerah Bagan Datuk, didalam Negeri Perak telah membunuh Nur Zia Fasihah binti Mohd Fadzil (No. K/P: 160831-08-0818) dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum dibawah seksyen 302 Kanun Keseksaan.

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H

Second Charge

Bahawa kamu pada 17/5/2015, antara jam 2:30 petang hingga 2:40 petang, di dalam rumah beralamat Rumah Projek Bantuan Bina Rumah Majlis Agama Islam dan Adat Melayu Perak di Kampung Sungai Haji Muhammad, Selekoh di dalam Daerah Bagan Datuk, didalam Negeri Perak telah membunuh Muhammad Firash Zafrill bin Mohd Fadzil (No. K/P: 150216-08-1027) dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum dibawah seksyen 302 Kanun Keseksaan.

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Third Charge

Bahawa kamu pada 17/5/2015, antara jam 2:30 petang hingga 2:40 petang, di dalam rumah beralamat Rumah Projek Bantuan Bina Rumah Majlis Agama Islam dan Adat Melayu Perak di Kampung Sungai Hj Muhammad, Selekoh di dalam Daerah Bagan Datuk, didalam Negeri Perak telah membunuh Muhammad Faqih Zahirulhaq bin Mohd Fadzil (No. K/P: 130402-08-0839) dan oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum dibawah seksyen 302 Kanun Keseksaan.

S 324 Penal Code No Kes: AA-45-2-05/2019

Bahawa kamu pada 17 May 2018, antara jam 2.15 petang hingga 2.25 petang, bertempat di Titi Pondok Hadapan Sekolah Kebangsaan Sungai Haji Muhammad, Selekoh di dalam daerah Bagan Datuk, di dalam Negeri Perak, telah dengan sengaja menyebabkan kecederaan ke atas Nur Zuryn Faziera binti Mohd Fadzil KPT: 090517-08-0464 dengan menggunakan parang. Maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 324 Kanun Keseksaan.

No Kes: AA-45-3-05/2019

Bahawa kamu pada 17 May 2018, lebih kurang jam 2.45 petang, bertempat di Jalan Hadapan Sekolah Kebangsaan Sungai Haji Muhammad, Selekoh di dalam daerah Bagan Datuk, di dalam Negeri Perak, telah dengan sengaja menyebabkan kecederaan ke atas Redhuan bin Embi (No. K/P: 860713-38-6215) dengan menggunakan parang. Maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 324 Kanun Keseksaan.

No Kes: AA-45-5-05/2019

Bahawa kamu pada 17 May 2018, antara jam 2.15 petang hingga 2.25 petang, bertempat di Titi Pondok Hadapan Sekolah Kebangsaan Sungai Haji Muhammad, Selekoh di dalam daerah Bagan Datuk, di dalam Negeri Perak, telah dengan sengaja menyebabkan kecederaan ke atas Nur aina Umaira binti Subri (No. K/P: 080216-10-1824) dengan menggunakan parang. Maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 324 Kanun Keseksaan.

S 307 Penal Code No Kes: AA-45-4-05/2019

Bahawa kamu pada 17 May 2018, antara jam 2.30 petangn hingga 2.40 petang, di dalam rumah beralamat Rumah Projek Bantuan Bina Rumah Majlis Agama Islam dan Adat Melayu Perak di Kampung Sungai Muhammad, Selekoh di dalam daerah Bagan Datuk, di dalam Negeri Perak, telah cuba melakukan bunuh dengan menggunakan parang yang boleh menyebabkan kematian kepada Zuraidah binti Mat Ali KPT: 830226-08-5776, maka kamu dengan ini telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 307 Kanun Keseksaan.

[4] The trial in respect of all the charges were heard jointly.

[5] The appellant was convicted by the High Court on three counts of murder under s 302 of the Penal Code and was sentenced to death by hanging.

[6] In respect of the offences under s 324 of the Penal Code, the appellant was sentenced to two years imprisonment for each charge from the date of arrest (17 May 2018), all the sentences to run consecutively.

[7] In respect of the charge under s 307 of the Penal Code, the appellant was sentenced to six years imprisonment for the date of arrest (17 May 2018).

[8] All sentences were ordered to run concurrently.

[9] However, at the outset of the appeal, learned counsel for the appellant intimated to us that he would only be proceeding with the appeals in respect of the charges under s 302 of the Penal Code.

[10] We therefore struck out the appeals in respect of the charge under s 324 Penal Code in respect of Cases No AA-45–2–05 of 2019, AA-45–3–05 of 2019 and AA-45–5–05 of 2019 respectively.

[11] We also struck out the appeal under s 307 of the Penal Code in Case No AA-45–4–05 of 2019.

[12] This judgment which is based upon a unanimous decision, will therefore only address the charges in respect of s 302 of the Penal Code.

FACTUAL BACKGROUND

[13] The pertinent facts of the case as unfolded the prosecution narrative set out hereinafter are by and large reproduced from the facts as laid out quite comprehensively by the learned High Court judge ('HCJ') in the grounds of decision with necessary modifications.

[14] Although they are fairly lengthy and includes matters raised in evidence, at times verbatim by certain key witnesses, it is necessary to set them out in order to place matters in perspective and to appreciate the manner in which the learned HCJ dealt with the offences and his eventual findings.

[15] Zuraidah bt Mat Ali (SP17) was the mother of the three deceased children as well as SP21. She is also the wife of Mohd Fadzil bin Mohammad (SP19). SP19 is also known as 'Zam'. The appellant is also known as 'Rambo'.

[16] The house known as 'Rumah Projek Bantuan Bina Rumah Majlis Agama Islam dan Adat Melayu Perak' mentioned in the charges under s 302 of the Penal Code is the house in which SP17, SP19, the three deceased children and SP21 stayed as a family together with the mother of SP17 who had since

passed away due to reasons unconnected with the case.

[17] SP21 was 11 years old at the time of giving evidence. Before SP21 gave evidence the learned deputy public prosecutor ('DPP') applied for a screen to be placed between SP21 and the appellant and for an adult to accompany SP21 while SP21 testified.

[18] The High Court judge ('HCJ') allowed the DPP's application for a screen to be placed between her and the appellant in accordance with s 3 of the Evidence of Child Act 2007.

[19] Pursuant to s 9 of the Act, the HCJ also allowed SP21 to be accompanied by an adult, in this case SP6, her headmistress, while giving evidence.

[20] The HCJ was satisfied from the explanation given by the learned DPP that SP21 was afraid to be in the presence of the appellant and required some form of reassurance to calm her emotions when giving evidence,

[21] The HCJ observed that SP21 was even afraid to enter the court for identification purposes when she saw the appellant in the dock.

[22] SP21 testified that the three deceased were her siblings and that she was the eldest. They all stayed at the house with her father SP19, mother SP17 and grandmother.

[23] SP21 attended the Sekolah Kebangsaaan Sungai Hj Muhammad Selekoh, Perak (the school). SP21's school hours are from 7am to 2pm. The school was about 60 meters from the house.

[24] According to SP17, the distance between the school and SP21's house was such that the voice of the teacher teaching and the children singing could be heard coming from the school.

[25] On 17 May 2018, SP21 returned home from school. She had a bath and then left the house for her religious class. She then went out to meet her friends at a small open air pondok the kampong folks called 'Jumbo' in front of the school while waiting for the religious class to start.

[26] At about 2.15pm as SP21 was chatting with SP20 and other friends at the Jumbo she noticed the appellant had come to the Jumbo with a yellow and grey RXZ motor cycle.

A **[27]** She recognised the motor cycle as belonging to the appellant who was a friend of her father, SP19. The appellant is known to her by the name 'Achik'. She had seen 'Achik' ride the same motor cycle on previous occasions.

B **[28]** In recalling what had happened at the Jumbo she said that when the appellant arrived he took out a parang from its sheath and began to hit her with the parang. He had approached her from the back. She saw him when she turned her head. He hit her at the left side of her head with the parang.

C **[29]** The appellant was shouting at that time but she could not make out what he was shouting. She did not know what had happened to the others at the Jumbo as she ran away on being struck by the appellant. She ran to the nearby house of one Husni Mubarak (SP24) to seek safety there.

D **[30]** SP20 was 12 years old at the time of giving evidence. Upon the application of the DPP, the HCJ also allowed a screen to be placed between SP20 and the appellant in accordance with s 3 of the Evidence of Child Act 2007 and pursuant to s 9 of the said Act.

E **[31]** The HCJ also allowed SP20 to be accompanied by an adult while giving evidence, in this case her own mother. The HCJ agreed with the DPP's explanation that SP20 was apprehensive in giving evidence in the presence of the appellant and that her mother was needed to allay SP20's fears.

F **[32]** SP20 testified that while they were at the Jumbo she suddenly heard the appellant shouting. She thought it was a mad person. She said the appellant attacked SP21 first.

G **[33]** He then attacked SP20. SP20 received injuries at her left arm and head. She felt that the appellant attacked them with a parang but did not actually see the parang as the whole incident happened quickly.

[34] She and SP21 then ran their separate ways. She identified the appellant
H as the person who attacked her and SP20. She had seen the appellant prior to this incident when the appellant went to the school to give SP21 some money.

[35] After having been injured, SP20 ran for safety to the house of Norazwa bt Mohd. Sidek (SP22). SP22's house was about 35 feet away from the school.

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[36] Once in SP22's house, SP22 noticed that SP20's hand was bleeding. SP22 was told that the appellant had run amok.

[37] SP22 had known the appellant for some time. He had done work for

her in her late husband's oil palm estate and had once even helped her deliver a motor cycle to her son in Penang.

[38] In seeing that a pupil of the school had been injured in such circumstances, SP22 tried to call Rashidah bt Ismail (SP6) who was the head mistress of the school, but the call could not go through.

[39] SP22 had to shout from her house to the security guard at the school, Noorhamizatul Fazlina bt Tarmizi (SP25) to inform SP6 of the incident at the Jumbo and to close the school gate.

[40] This message was duly conveyed and complied with by SP25.0n receiving the news that her pupils had been injured, SP6 made a call to the Balai Polis Rungkup at about 2.30pm asking for help. She spoke to Lans Koperal Mohd Fazli bin Abdullah (SP14).

[41] SP6 then decided to drive to the Klinik Kesihatan where SP20 and SP21 were being treated.

[42] On reaching her car which was parked near the house where SP21 and her family stayed she heard screams from the house and SP19 calling her for help and his children crying.

[43] SP6 also saw the appellant in front of SP21's house with a parang in his hand and shouting. As she was passing the house with her car a little while later the house was quiet. She recognised the appellant as he was doing some work near the school the previous day.

[44] A little earlier on, as SP25 was closing the school gate she saw the appellant looking at her from the Jumbo. The appellant was holding a parang.

[45] The appellant then left the place on a motorcycle. Suddenly she heard children shouting and crying. After about five minutes the shouting stopped. She wondered why the shouting and crying stopped so suddenly.

[46] About ten minutes later she (SP25) saw the appellant again in front of the school. This time his clothes and parang were bloodstained. She heard the appellant say he had killed three persons. The relevant part of her evidence is as follows:

> TPR: Lepas Puan dengar Puan Azwa jerit, Puan kunci pintu, lepas itu ada kejadian apa lagi yang berlaku?
>
> SP25: Rambo mengangkat motor dia pergi ke hadapan.

MAH: Angka tapa?

SP25: Angkat motor dia start ke hadapan saya tidak pasti ke mana. Tiba-tiba saya terdengar satu suara budak-budak menjerit sambil menangis, bercampur menangis, dalam lebih kurang 5 minit kemudian senyap. Bila senyap saya tertanya-tanya tiba-tiba boleh senyap, kenapa boleh senyap. Rambo tidak lama lepas itu dia pergi berlegar balik ke hadapan sekolah dengan parang baju berdarah dia sebut 'aku sudah bunuh 3 orang'.

TPR: Dia sebut dekat siapa?

SP25: Dia sebut dekat berhadapan sekolah tapi saya dengar 'aku sudah bunuh 3 orang'.

[47] As to what happened in that approximately ten minutes when SP25 first saw the appellant and the second time when she heard him say 'aku sudah bunuh 3 orang' can be gathered from the evidence of SP22.

[48] From the window of her house SP22 could observe the appellant at the Jumbo, then she saw him move away from the Jumbo by motorcycle and saw that the appellant was heading towards SP21's house which was about 60 meters away from her house.

[49] The sound of the appellant's motorcycle which was recognised by the loud exhaust also came from the direction of SP21's house. On seeing that the appellant was no longer at the Jumbo, SP22 seized the opportunity and brought SP20 to the house of SP24. From there SP20 together with SP21 were brought to the Klinik Kesihatan Selekoh by SP24 for medical treatment.

[50] SP21's house was situated to the right of SP7's house. The distance between the houses was only about 30 to 40 feet. From her window she saw the appellant whom she knew as 'Yang' outside the house. She described the situation as follows:

Dia mengamuk macam-macam, maki.

[51] She also heard children crying inside the house and SP17 calling out 'abang abang' From her kitchen window SP7 asked the appellant:

Yang, apa pasal kau ini Yang, buat macam ini, bulan puasa, kau mengucap.

[52] The appellant showed SP7 the parang in his hand in a threatening manner. This frightened SP7. The following is her account of what she saw and heard:

TPR: Berapa lama Andak dia mengamuk-mengamuk di luar sebelum dia boleh masuk yang Andak dengar bunyi itu, lebih kurang?

SP7: Lama juga.

TPR: Andak dengar dia cakap apa?

SP7: Dia cakap macam-macam.

TPR: Apa dia cakap, Andak beritahu Hakim. Kan Andak kata lama juga dia mengamuk-mengamuk dia kata apa yang Andak boleh ingat?

SP7: Cakap Babi, Bangsa tidak elok, macam-macam dia cakap.

TPR: Babi, Bangsa tidak elok?

SP7: Haa.

TPR: Ada dia panggil sesiapa?

SP7: Tiada.

TPR: Dia tunjuk parang dekat Andak?

SP7: Hmm.

TPR: Masa itu Andak cakap dengan dia dari mana?

SP7: Dari tingkap rumah Andak, rumah dapur.

TPR: Masa dia tunjuk parang dekat Andak, dia kata apa dekat Andak?

SP7: 'Ini nak' katanya. Macam itu katanya.

TPR: Dia tanya Andak?

SP7: Haa. Lepas itu Andak dengar macam itu, Andak takutlah. Dia sudah hendak bagi parang.

[53] From her house SP7 clearly saw the accused banging on the front door of SP21's house with the parang. On breaking the door, the appellant put his hand through the broken part of the door and unlocked the door from the inside.

[54] She saw the appellant enter the house. After a few moments the children's cries could no longer be heard and there was silence. She then saw the appellant come out of the house a few minutes later. There was blood on his hands and the parang he was holding. He then went in the direction of the school.

[55] SP17, described in detail what happened inside her home which led to the death of her three children and the injuries inflicted on her by the appellant.

[56] SP17 testified that on 17 May 2018 she was in the house together with SP19, SP21, the three deceased children and SP17's mother. At that time her mother's eyesight was bad and she could not walk. On the day in question SP21

had left the house to go to religious class at about 2.15pm.

[57] SP 17 proceeded to mix milk for the first and second deceased in the kitchen. She then heard the sound of a motorcycle and shouting outside the house. She thought nothing of it and continued mixing the milk.

[58] She then got a call from SP21 using the neighbor's phone. SP21 told her mother 'Mak, ahik Rambo pukul akak'. The phone then went dead. She then saw through the window the appellant on a motorcycle coming from the direction of the school to the path leading to her house. The appellant was shouting for 'Zam' (SP19) to come out of the house 'Zam, kau keluar'.

[59] SP19 was sleeping in the bedroom. SP17 woke him up and told him 'Abang, Yang datang mengamuk'. On hearing this SP19 locked the front door and told SP17 to call for help. SP19 then went out through the back door to get help.

[60] SP17 stated that the appellant was hitting the front door with the parang. A part of the door broke and the appellant managed to put his hand in and unlock the door from the inside. At that time the first deceased was by the side of SP17.

[61] On entering the house, the appellant was searching for her husband. The appellant asked SP17 'Di mana Zam'. SP17 replied that SP19 was not there.

[62] The appellant then attacked SP17 with the parang. He used the parang to hit her almost severing her left hand. He then swung the parang continuously at SP17 injuring her right hand as well as her face. Her right thumb was almost severed. She said that she was trying to protect herself with her hands from the blows of the parang. She identified the parang as P93(B).

[63] SP17's mother who was at the time at the hall tried to placate the situation by saying 'sudah sudah'. The appellant retorted by asking her to keep quite as she was an old woman. The appellant did not do anything to her.

[64] SP17 said that after attacking her the appellant attacked the first deceased child who was next to SP17 and crying. The appellant hit the first deceased with the parang and the first deceased stopped crying.

[65] SP17 saw the first deceased collapse and bleeding from the neck. The appellant continued to go in and out of the house looking for SP19. SP17 said

that he also went out through the back door and entered through the front door.

[66] SP17 then saw the second deceased child come from the direction of kitchen. His facial expression showed that he was in pain. He had his hand over his shoulder which was bleeding. The second deceased then collapsed in the hall near her. As the appellant was going in and out of the house SP17 described what the appellant said as he pointed to the second deceased child:

> SP17: Dia datang, lepas sambil dia masuk keluar masuk, dia sempat tunjuk anak saya Firash, 'yang ini sudah mampus dah' katanya.

[67] In order to save her life SP17 dragged herself to the kitchen. She could not stand as her right knee was severely injured because the appellant had hit her there several times with the parang. She managed to reach the bathroom towards the back of the house.

[68] As she leaned on the bathroom door SP17 asked the appellant why he had done this to her children. He told her he wanted to eliminate the descendants of SP19. The appellant then attacked her once again with his fist by punching her on the left side of her head.

This was how SP17 described the exchange:

> SP17: Masa itu saya bersandar dekat dinding bilik air saya, lepas itu masa saya bersandar itu Yang itu ada datang serang saya, lepas itu saya ada cakap dengan dia, saya cakap 'sudahlah Yang, kenapa engkau buat anak-anak aku macam ini', dia cakap 'Laki engkau itu tidak guna, aku hendak hapuskan kau, keturunan Zam' dia cakap.
>
> TPR: Lepas itu apa dia buat dekat puan lepas dia cakap?
>
> SP17: Dia tumbuk kepala saya, disini.
>
> JB: Dia tumbuk kepala saya di sebelah?
>
> SP17: Di sebelah kiri.
>
> TPR: Dia ada kata 'Laki engkau tidak guna, hendak hapuskan keturunan Zam'?
>
> SP17: Dia cakap 'aku memang hendak hapuskan keturunan Zam'.

[69] As she was leaning against the bathroom door she could see the body of the third deceased child lying outside the house near the back door. She could see him only from waist down as her view was blocked by a wall. SP17 said she heard him cry before she saw his body there.

[70] Seeing the door to the store room open, SD17 dragged herself into the

storeroom and locked the door from the inside by pressing the knob button. According to SP17 the appellant was still looking for her in the house. She heard him say 'mana seorang lagi ini, tidak mampus lagi ke' while she was in the storeroom.

[71] The appellant never found her there. SP17 saw that the appellant's clothes were bloodstained when he was in the house. SP17 stayed in the storeroom until she was found by Nor Farah bt Misrun (SP18) from Jabatan Petahanan Awam Malaysia (JPAM). SP17 was later brought to the Teluk Intan Hospital.

[72] SP17 identified P40(8), P40(14) and P40 (20) as the photographs of the position of the bodies of the first, second and third deceased respectively at the house after the incident.

[73] During cross-examination SP17 denied that the appellant had told her that SP19 had defamed the appellant by saying that the accused had an incestuous relationship with his mother.

[74] She also denied that the appellant had said that SP19 had cheated him. She agreed with counsel that the appellant had told her he was angry that she and her husband had unnatural sex as it was against their religion.

[75] She did not know whether SP19 and the appellant were taking drugs. She did not agree that the appellant was insane as he could recognise everyone in the house and could talk to SP17 and her mother. She also disagreed with counsel's suggestion that SP19 had gone out of the house on the morning of 17 May 2018 to work with the appellant.

[76] SP19 stated that SP17 was his wife and they stayed at the house together with the three deceased children, SP21 and his mother in law. He knew the appellant and they did some work around the kampong. The appellant had joined him about five to six months prior to the incident. He would pay the appellant according to the amount of work done.

[77] On 17 May 2018 he did not do any work as he was determined to fast with his family. At about 2pm as he was sleeping he was awakened by his wife to tell him that SP21 had called saying that the appellant had hit her.

[78] He then heard the accused motor cycle. He heard the appellant shout words like 'haram jadah, aku bunuh kamu Zam'. On hearing this he locked the front door. He told his wife to call for help.

[79] He then ran out of the house shouting loudly for help. He thought the appellant would chase him. He did not think that the appellant would act in such a way as to cause harm to his family:

> PEG: ... Encik, saya pun tergerak satu kecemasan berlaku, kamu sepatutnya pergi jiran terdekat bawa semua orang.
>
> SP19: Saya tidak sangka saya orang datang hendak bunuh anak isteri saya, ingat dia kejar saya. Saya ingat dia tidak buat anak isteri saya.

[80] After going out of his house SP19 managed to seek shelter in one Pak Ngah's house. He was there for about one hour. When he was brought back to the house he was informed that his wife and children had all died and the police had taken the appellant away. He did not go back in as he felt there was no longer any reason to do so. This is how he described his situation:

> Saya rasa macam sudah tiada apa-apa disitu, tidak bermakna bagi saya sebab mereka sudah kata anak isteri sudah tiada masa itu.

[81] It was later that he found out that SP17 and SP21 were still alive. He identified the parang P93B and the sheath P94A as used by the appellant for work.

[82] He identified the bodies of the three deceased children taken at the hospital for the postmortem. He testified that photographs P47(15), P48(22) and P49(38) showed the bodies the third deceased, the first deceased and the second deceased respectively.

[83] During cross-examination SP19 denied that he had left the house that morning to consume syabu with the appellant. SP19 disagreed that he bought drugs from a pusher called Ujang. He was not sure whether the appellant took drugs while working with him because of the hard work.

[84] He also denied counsel's suggestion that the appellant was finding for him as he had cheated the appellant of money in connection with work. He also denied that he did not ask for help when he ran out of the house.

[85] He disagreed with counsel that had SP19 remained in the house and cooperated with the appellant the latter would not have done what he did.

[86] SP19 also denied that he had told the appellant that he had unnatural sex with SP17 and this made the appellant very angry as the latter felt that that was disgusting.

[87] SP19 denied that he teased the appellant or spread rumours that the

A appellant was unmarried and had an incestuous relationship with his mother.

[88] SP19 did not know that this triggered the appellant's anger which led to the incident that morning.

B

[89] SP19 testified that about a week before the incident he had a misunderstanding with the appellant over money in respect of work done by them.

C **[90]** The appellant was angry because he was being paid less than what he ought to be paid. This led to SP19 arranging for them to see the ketua kampong to solve the matter. From that day on the appellant had been cold towards SP19.

D **[91]** After SP6's call to SP14 at the Balai, Koperal Mohd Saiful Bahari bin Bakhari (SP30) and Konstable Mahfuz bin Md Isa (SP31) were ordered to go to the school. According to SP30 he was informed by SP14 that there was a man who had run amok in front of the school.

E

[92] On arrival at the front of the school at about 2.40pm, SP30 and SP31 searched for the appellant within the vicinity of the school. They managed to spot the accused holding a parang in his right hand talking to an old man known as Pak Andak. On seeing SP30 the appellant ran away. SP30 was in his police uniform at that time.

F

[93] Whilst the search for the appellant was going on SP30 saw a man known to SP 30 as 'Ustaz' fall of his motorcycle in front of him. This person was later identified as Mohd Redhuan bin Embi (SP23).

G

[94] SP23 was a resident of Kampong Sungai Hj Muhammad. He was a teacher teaching Pendidikan Islam at SMK Rungkup, Bagan Datoh, Perak. According to SP23 he was returning to Kampong Sungai Hj Muhammad from SMK Rungkup by motorcycle on 17 May 2018.

H

[95] He was wearing a helmet at that time. He left SMK Rungkup after work at about 2.30pm. The journey back took about 20 minutes. On reaching the kampung he found it deserted. He thought it could be because it was the first day of the fasting month and the people were indoors.

I

[96] As he was approaching the school he came across the appellant carrying a parang. He had known the appellant before as the appellant had done some work for SP23's father.

[97] He knew the appellant by the name 'Rambo'. He also said that the clothes the appellant was wearing were stained. As the appellant was carrying a parang he thought that he was coming from work.

[98] He acknowledged the appellant by raising his head. The appellant suddenly ran forward and slashed SP23's face with the parang. SP23 was injured in the right cheek. SP23 then speeded off in shock. He saw SP30 and SP31 ahead but fell off his motor cycle because he felt weak. He was then helped by SP30 and SP31.

[99] SP23 still bore the scar on his right cheek. He confirmed that the injury he sustained is as depicted in photograph P42. He also identified the helmet (P36A) he was wearing at that time. The helmet also bore the mark made by the parang on it. The identified the parang P39B as the type used by the appellant on him.

[100] He was later brought to hospital for treatment for his injury. He did not know why the appellant injured him as there was no quarrel between them. He also denied that he sounded his horn at the appellant which startled him.

[101] After helping SP23, SP30 contacted the Balai for help to apprehend the accused. Shortly thereafter three other police personnel including Koperal Mohamad Rashidee bin Husin (SP32) arrived. SP30 and the other members of the police team found the appellant roaming around about 70 meters from the school.

[102] A struggle ensued between SP30 and the appellant when the police team wanted to apprehend the appellant. SP30 managed to wrest the parang from the appellant. SP30 sustained superficial injuries namely 'right upper limb abrasion over mid-forearm and right hand' in the struggle.

[103] It was after the arrest of the appellant that SP30 noticed that the appellant's clothes were blood stained. He identified the photograph P45(1–2) as depicting the condition of the appellant's clothes at the time of arrest. SP30 seized the parang and its sheath.

[104] He identified the parang as P93(B) and the sheath as P94(A). The sheath was tied around the waist of the appellant at the time of arrest. He identified the parang and sheath through the markings he made on them. He had marked the parang 'ST and placed his signature and the date 17 May 2018 and on it.

[105] Likewise, he marked the sheath 'S2' placed his signature and date 17

May 2018 on it. He marked 'S3' (P95A) and 'S4' (P96A) respectively on the shirt and pants worn by the appellant.

[106] He dated them 17 May 2018 and put his signature on them. He also prepared a search list P136 listing the items seized at the place of arrest.

[107] He clarified that he only seized the parang and the sheath at the place of arrest. The clothes worn by the appellant were seized at the Balai. From the search list the arrest took place at about 2.50pm. The parang P93(B) and its sheath P(94A) and the appellant were brought back to the Balai by SP32.

[108] Later SP32 seized a motorcycle in front of SP17's house bearing registration number BDY5195 which had been identified as having been used by the accused. He identified the motorcycle through the photographs P45(1–2). Upon further investigation it was found that the motorcycle was a stolen motorcycle.

[109] Ail the items seized including the parang and the clothes worn by the appellant were later handed over to the investigating officer of the case ASP Subkey (SP34) by SP30.

[110] SP30 lodged three police reports in respect of the arrest of the appellant. Of relevance was Rungkup Report 82/18 (P137) with regard to the arrest of the appellant and Rungkup Report 826/18 (P139) in respect of the struggle he had with the appellant in the course of apprehending him.

[111] Photographs P40(7), (11) and (19) were referred to SP31 as showing the position of the bodies of the three deceased children as he found them when he entered the house. SP30 noted the front wooden door of the house had been broken.

[112] SP30 later informed his superiors of the discovery and secured the house. He identified the photographs in P39(1–11) and P40(7–14) as depicting the condition in and out of the house at the time of his arrival with SP31. Thereafter a medical team was called in.

Analysis of appellant's blood sample

[113] Of relevance to the fact as to whether the appellant had consumed any drugs prior to the incident is the evidence of Dr Sharmilah a/p Kuppusami (SP15).

[114] SP15 is the Ahli Kimia di Sahagian Toksikologi Pusat Analisis Sains Forensik, Jabatan Kimia Malaysia, Petaling Jaya. She stated that on examining the blood sample taken from the appellant she found it to contain the metabolic delta-9-tetrahydrocannabinol which is a main active ingredient in cannabis which is also known as 'ganja'. Reference was made to Laporan Kimia 18-FR-B-11742 (P113) which was prepared by SP15.

[115] According to SP15 the amount of this active ingredient however was so small that it would not have any effect to the behavior of a person. This was what emerged during examination in chief:

> TPR: Merujuk kepada kuantiti yang dikesan dalam spesimen darah ini, boleh Doktor nyatakan berapa, amount?
>
> SP15: Amount yang dikesan 0.02 mikrogram per milimeter dan pada paras tersebut metabolic THC-COOH tidak memberi kesan kepada kelakuan seseorang.
>
> TPR: Bermaksud amount ini adalah satu amount yang banyak atau sedikit atau bagaimana dalam layman term?
>
> SP15: Dalam layman term sedikit, a mat sedikit.
>
> TPR: Tidak memberi kesan kepada kelakuan seseorang?
>
> SP15: Hmm. It doesn't alter person behaviour.

[116] During cross-examination she agreed that drugs like Erarnine, Syabu and cannabis can cause a change in the behavior in a person. Shabu consumed can cause aggressiveness in a person. She also stated cannabis can be traced in the blood longer than other drugs. The cannabis could be detected in the blood for up to 36 hours after consumption.

[117] As for erarnine and methaphetamine these drugs could be detected in the blood only up to 24 hours after being taken. SP15 was of the view that for someone who had consumed 'Syabu, Meth or whatever drugs' if the blood samples were taken on the day itself it will show that result. It is not in dispute that the blood sample of the appellant was taken on 19 May 2018 at about 2.30pm.

[118] As to the window period of detection for syntactic drugs much would depend on the metabolism rate of the individual. This is what she said:

> When it come sintectic drugs like Methamphetamine and Erarnine that is very fast metabolise drugs which the body Metabolise quickly within few hours, maybe 6 hours, 8 hours, depending on that person, Metabolisme rate of each individual is different, so *based on that person.*

[119] The HCJ after having evaluated the prosecution case found that they had made out a prima facie case against the appellant in respect of all the charges and proceeded accordingly to call for the appellant to make his defence on all the charges.

The defence

[120] After the three alternatives consequent upon such a finding were read, the appellant elected to give an unsworn statement from the dock.

[121] The other witness for the defence was Dr Ian Lloyd Anthony (SD2).

[122] The appellant read out his statement in court.

[123] The appellant in his statement (D148) stated that he was born and raised in Kampung Sungai Hj Muhammad. In 2014 he worked as a labourer. In 2017 he started to do kampong work. He used the parang during his work. The parang was always tied to his waist for convenience.

[124] He first started working with SP19 around 2017.

[125] Although SP19 was not from the Kampong he could get work as he was a sweet talker and good negotiator. SP19 however also taught the appellant to smoke drugs like syabu, five and ganja (cannabis).

[126] Taking the drugs prevented him from getting tired while working. He took ganja as it made him feel relaxed. He took drugs day and night from 2017 onwards. He sometimes heard whispers in his ear.

[127] He began the day on 17 May 2018 by buying breakfast for his mother. The then fed his cows. At about 10am he went to SP19's house. They then proceeded to Pak Andak's oil palm plantation on SP19's motorcycle to work.

[128] All along the way to work he was venting to SP19 his frustration and how disappointed he was about work-related matters. In his statement he said that SP19 was dishonest and had cheated him of his wages in respect of work carried out together.

[129] Every time he questioned SP19 about work SP19 would give a distorted story. He also complained that SP19 took a long time to prepare for work and he had to wait long for SP19 outside SP19's house.

[130] On reaching Pak Andak's plantation SP19 gave him a new drug to forget about his dissatisfaction about work. SP19 told him it was good stuff (*barang baik*). A

[131] SP19 told the appellant that the appellant was confused and the new drug would calm him down. According to the appellant the new drug was different. After taking the drug he and SP19 started to do their work. B

[132] The appellant then felt unwell and asked SP19 to send him home. C

[133] On reaching his home the appellant laid on a swing.

[134] The appellant was thinking about things which made him feel dissatisfied with SP19. Apart from SP19 cheating him of his wages he was also disappointed that SP19 had told him that he had unnatural sex with SP17 which was against the religion of Islam. D

[135] The appellant was also offended that SP19 had accused him of having an incestuous relationship with his mother. E

[136] He then fell asleep and did not know what happened after that. He only knew that he was arrested by the police and that they said he had killed a few people, namely SP19's children. F

[137] He asserted in his statement that he did not have any intention nor planned to kill SP19's children. They had nothing to do with the matter between him and SP19. He did not know or realised what had happened until after he woke up from his sleep. G

[138] The second witness, SD2 was the Consultant Forensic Psychiatrist, Hospital Bahagia Ulu Kinta, Tanjung Rambutan.

[139] There is a court order dated 25 March 2019 where it was previously ordered that the appellant undergo observation at the Hospital Bahagia Ulu Kinta under s 342 Criminal Procedure Code. H

[140] As a result of his observations SD2 made a report as to his findings (P111). I

[141] SD2 testified that the appellant did not have any history of psychiatric illness prior to his admission to Hospital Bahagia Ulu Kinta.

A **[142]** In his report SD2 stated that the appellant was fit to plead and that the appellant was sane at the time of the commission of the offences and that he knew the consequences of his actions and could know what he was doing was wrong and against the law.

B **[143]** The appellant has been under the observation of SD2 for a duration of one month from 25 March 2019 to 24 April 2019. In the course of this observation SD2 had interviewed the appellant personally 11 times on 11 separate days.

C **[144]** The purpose of the repeated interviews was to ascertain the veracity of the information and the mental state of the appellant. SD2 confirmed that the information obtained from the interviews were 'good and reliable'.

D **[145]** SD2 had also interviewed members of the appellant's family namely his mother, brother and uncle at his home. These interviews consisted of a detailed psychiatric evaluation, ward observation and CCTV observation in the ward.

E **[146]** From his direct examination of the appellant, SD2 found that the appellant had been abusing three types of drugs namely 'methamphetamine and erarnine, nimetazepam'. SD2 also said that the appellant had been using cannabis since his teens and methamphetamine since 2010.

F **[147]** On being questioned by counsel he said that cannabis had a window detection period of 10 to 45 days depending on the amount consumed. As for methamphetamine and nimetazepam the period would be shorter detection period of up to three days or 72 hours as these drugs were water soluble.

G **[148]** SD2 was of the view that prolonged drug abuse may or may not cause disruption of one's cognitive abilities. As to whether prolonged synthetic drug abuse can cause psychosis, he stated that generally psychosis can be experienced in users of methamphetamine especially if the use is excessive.

H **[149]** He however said that this was only a possibility and does not happen in all cases. He stressed that whether it was long term or short term, it would depend on the individual's susceptibility. In answer to a question from the court he agreed that the matter was 'very subjective'.

I **[150]** He also said that someone with a problem of prolonged drug abuse could cause mania problems but this was uncommon. Finally, in answer to the question by counsel whether prolonged use of methamphetamine could cause depression SD2 opined that as methamphetamine was a stimulant drug, depression was not a feature in methamphetamine.

[151] SD 2 elaborated that if a person takes a particular amount of drugs he can maintain his three areas of functioning, namely cognition, coordination and speech. A

[152] However, if he took an excess of the drug he would go into a state of intoxication. Because of this his cognitive capacity would be affected. On the other hand, if he stopped taking the drug and go into a state of substance withdrawal, this too would affect his cognitive capacity. B

[153] Specifically referring to the appellant, SD2 was of the opinion that he did not think the substance abuse or his substance dependence had affected his mental faculties at the time of the offences. C

[154] He agreed with the DPP that this meant the appellant's faculty to choose between right and wrong was intact. SD2 was also of the opinion that from his observation the appellant never experienced any psychotic phenomena. This was how SD2 expressed his opinion on the issue: D

> TPR: Furthermore Doctor, regarding the psychosis, psychotic disorder in this case, does the accused fulfil the diagnosis of substance induced psychotic disorder? E
>
> S02: Yang Arif, the accused has never experienced any psychotic phenomena. When I say psychotic phenomena Yang Arif, I mean in the term of hallucination and delusion. These are the 2 psychotic symptoms. The accused has never experienced psychotic symptoms mean hallucination or delusion while under the influence of cannabis, methamphetamine or for that matter nimetazepam. F

[155] As to the question whether the appellant suffered from any intoxicant effect as a result of substance abuse, SD 2 responded as follows:

> Yang Arif, I examined the accused in the relation to the possibility of him being intoxicated at the time of the alleged offence. In assessing whether a person is intoxicated by virtue of consuming drug in this case, it's not just one particular drug, it is 3 different drugs. We have to look into 3 main areas of assessment. The first area is cognition. Under cognition, we have to assess his orientation, whether he was orientated to time, place and person at that particular point of time. So from my assessment, it was clear to me that he was orientated to time, he was able to tell me exactly when the offence happen. He was orientated to place, he was able to tell me exactly where he went during the course of the offence in the victim's home as well as the school. He was also able to identify certain individuals, who he have countered throughout the course of the day, named the victims at their own homes, the 3 victims, the children, the mother of the 3 children, the father of the victims as well as an uncle who he have countered just outside the school. He was also able to identify that there was a security guard posted at the gate of the school. That tells me that he was, his orientation was intact. He was orientated to time, place and person. With regards to his cognition as well besides orientation, we have to look into his ability in terms of his memory and understanding. From my assessment of the G H I

accused, I found that his memory was intact. He was able to recall all the details pertaining to the alleged offence quite clearly. That is the first area, cognition. The second area of assessment in relation to a person whom we suspect could be intoxicated would be coordination, motor coordination. Now a person in the state of intoxication may from drugs alcohol, we would expect him to have some abnormality in his gait, unsteadiness in movements, involuntarily movements of the limbs such as tremors, shakes. Intoxication to a level that you'll be unable even operate a motor vehicle. In this case, the accused was able to ride a motorcycle on that day of the offence. This tells me that his coordination was preserved. The third area is speech or language. When a person who is intoxicated, one would expect that the speech is slur or incomprehensible. However, in this case, I found that he was able to articulate words that he had told me that he had uttered during the course of the event on that day. It was quite clear that the accused was able to recall. So from these 3 areas of assessment, cognition, coordination and speech, I'm able to opine that he was not under the state of substance intoxication at the time of the alleged offence.

ANALYSIS

Prosecution case

[156] At the conclusion of the case for the prosecution, the learned High Court judge (HCJ) had correctly set out the provisions of ss 299 and 300 of the Penal Code and the respective ingredients of the offence of murder.

Section 302 of the Penal Code

[157] The HCJ also cited the case of *Mahadzir bin Yusof & Anor v Public Prosecutor* [2011] 1 MLJ 297; [2013] 9 CLJ 287 which had set out the necessary ingredients of the offence which the prosecution had to prove namely:

(a) that first deceased, second deceased and third deceased are dead;

(b) that the three deceased died as a result of injuries sustained by them;

(c) that the injuries of the three deceased were caused or the result of the act of the appellant;

(d) that in inflicting the injuries upon the three deceased the appellant either:

(i) caused them with the intention of causing the death on the three deceased; or

(ii) caused them with the intention of causing such bodily injuries on the three deceased as the appellant knew to be likely to cause death; or caused them with the intention of causing bodily injuries on the three deceased and such bodily injuries intended to be inflicted were sufficient

in the ordinary course of nature to cause their death; or

(iii) committed the acts that are imminently so dangerous that the appellant knows that it must in all probability cause death or such bodily injuries as are likely to cause their death and commits such acts without any excuse for incurring the risk of causing death, or such injury.

[158] The HCJ had thus employed the correct legal principles in coming to his decision. The HCJ then meticulously applied the legal principles in relation to the ingredients of the offence to the facts of the case based upon the evidence adduced by the prosecution.

[159] With regard to the ingredient of the identity of the deceased persons, the HCJ had alluded to the evidence of both SP16 and SP19.

[160] As far as the ingredient that the three deceased died from injuries sustained, the HCJ referred to the testimony of Dr Siti Zanariah bt Md Naziri (SP16) who performed the postmortem on the three deceased.

[161] SP16 stated that the cause of death for the first deceased was as follows:

Punca kematian adalah pendarahan berlebihan akibat luka tetak di leher.

[162] SP16 stated the cause of death of the second deceased as follows:

Sebab kematian adalah kecederaan kepala akibat luka tetak.

[163] SP 16 described the cause of death in respect of the third deceased in the following manner:

Sebab kematian adalah pendarahan berlebihan akibat luka-luka hiris dan tetak pada leher.

[164] The HCJ then concluded from the evidence of SP16 that he was satisfied that the three deceased died due to the injuries sustained.

[165] In respect of the third element that the appellant caused the injuries to the deceased, the HCJ described that after the incident at the Jumbo, the appellant had proceeded to the house where SP17, SP19 and the three deceased were. The HCJ said that it was in evidence that SP19 had left the house before the appellant gained entry.

[166] The HCJ then proceeded to evaluate the evidence by stating that SP7 witnessed the appellant banging the front door of the house with a parang.

Upon entering the house SP17 was attacked by the appellant with the parang. The appellant then slashed the first deceased with the parang. The first deceased was right next to her then.

[167] The HCJ referred to the testimony of SP17 that the appellant had gone back and forth towards the kitchen. A few moments later the second deceased came to the hall from the kitchen and collapsed in the hall. Whilst leaning on the bathroom door, SP17 saw the body of the third deceased from waist down outside the house near the back door.

[168] The HCJ said that although SP17 did not see the appellant cause the injuries to the second and third deceased, the circumstantial evidence overwhelmingly indicated that it was the appellant who inflicted the fatal injuries on them.

[169] The HCJ cited in support the case of *Sukhvinder Singh Naldip Singh v Public Prosecutor & another appeal* [2014] 5 CLJ 574 in relation to circumstantial evidence.

[170] The HCJ said that he found sufficient circumstantial evidence which, if considered collectively, would lead to the irresistible inference that it was the appellant and no one else had caused the injuries on the second and third deceased and went on to consider the circumstantial evidence.

[171] In this regard the HCJ had correctly applied the law with regard to circumstantial evidence which he then astutely applied to the facts of the case based upon the evidence adduced by the prosecution.

[172] The HCJ amongst others alluded to the evidence that SP17 had seen the appellant go to the back portion of the house from where the second deceased emerged and the body of the third deceased was found and that the only people in the house at the material time were the three deceased children, SP17 and her mother.

[173] The HCJ then referred to the evidence that disclosed that the appellant was in the house for about ten minutes and that there were screams in the house which stopped when the appellant was seen coming out of the house. The evidence had also disclosed that the parang and the hands of the appellant had blood on them.

[174] The HCJ concluded that it was inconceivable that someone else other than the appellant had caused the death of the second and third deceased.

[175] The HCJ referred to the unchallenged evidence that the appellant was in physical possession of the parang throughout right up to his arrest and the conduct of the appellant before he entered the house such as breaking the front door with the parang as being relevant of the fact that it was the appellant and no one else who had inflicted the injuries.

[176] The HCJ stated that there was no other cause or contributory cause of death for the three deceased apart from that stated by SP16. From the evidence of SP16 he was satisfied that the three deceased died due to the injuries sustained

[177] The HCJ then referred to the forensic evidence as testified to by Siti Hajar bt Hussin (SP10) which pointed to the presence of SP17's DNA on the parang (P93B) and the sheath (P94A).

[178] The DNA of the first deceased was found on the shirt (P95A) worn by the accused. The DNA of SP17 and the first deceased were also found on a part of the appellant's jeans (P96A).

[179] SP10 also stated that although the DNA of SP17 was dominant on another part of the appellant's jeans, it cannot be discounted that the mixed DNA of the first, second and third deceased was also present on that part of P96A.

[180] The forensic evidence also pointed to the presence of SP17's DNA on the parang (P93B) and the sheath (P94A). The DNA of the first deceased was found on the shirt (P95A) worn by the appellant. The DNA of SP17 and the first deceased were also found on a part of the appellant's jeans (P96A).

[181] The HCJ then concluded that the direct evidence and circumstantial evidence pointed to the unmistakable fact that is it was the appellant who had caused the injuries on each of the three deceased which led to their deaths.

[182] The HCJ then went on to consider the ingredient that the act of the appellant in inflicting injuries on each of the three deceased came within any one of the four circumstances set out in ss 300(a)-(d) of the Penal Code and stated that this concerned the mens rea of the appellant at the time when he caused the injuries on the three deceased.

[183] The HCJ said that it is trite that intention or knowledge is not capable of being established through direct evidence and that intention is a matter of

inference and the nature of the injuries sustained by the deceased including the number of wounds and the weapon used by the accused affords a reliable indicator of an accused's intention.

[184] In this regard the HCJ stated that the appellant had used a parang on the three deceased. The parang was a sharp edged and heavy cutting instrument used by the appellant for his 'kerja kampong'.

[185] The HCJ observed that the injuries on al! the three deceased were at the vital parts of the body. The first deceased died from the severance of the jugular vein at her neck.

[186] The second deceased died due to head injuries. His skull was cracked and there was damage to his brain.

[187] The third deceased had injuries to his neck which caused severance of a major blood vessel and the joints T5 and T6 at the spinal cord had been cut.

[188] The HCJ in his grounds referred to the medical evidence which showed that the appellant had used considerable force or 'kuasa yang kuat' to inflict these injuries and he had used the parang 'bertubi-tubi kali' on the three deceased at the vital parts of the body.

[189] The HCJ concluded from this that the use of the parang in such a manner would obviously cause death to the three deceased who were aged between two years old and five years old at the material time.

[190] The HJC stated that in considering the intention of the appellant he also took into consideration the following words used by the appellant at the material time as follows:

(a) 'laki engkau itu tidak guna, aku hendak hapuskan kau, keturunan Zam' while finding for SP19 in the house;

(b) 'yang ini sudah mampus dah' as he pointed to the body of the second deceased;

(c) 'mana seorang lagi ini, tidak mampus lagi ke' whilst finding for SP17 who was hiding in the storeroom; and

(d) 'aku sudah bunuh 3 orang' which was heard by SP25 when the accused was in front of the school, as evidence that the injuries cause by the accused on the three deceased were premeditated and intentional.

[191] The HCJ had justifiably concluded from all the above evidence that the appellant had by his actions the intention to cause the death of the three deceased under s 300(a) of the Penal Code.

[192] The HCJ consequently found that there was a prima facie case that the appellant committed the offence under s 302 of the Penal Code against all three deceased.

[193] We find that the HCJ had exercised meticulous consideration and evaluation of the evidence in coming to his findings and we find no fault with his approach and conclusions reached based upon the evidence.

[194] Section 84, 85 and 86 of the Penal Code (unsound mind and intoxication)

[195] The HCJ also considered other matters raised by the defence including the fact that the appellant was under the influence of drugs and that he was of unsound mind and had a mental problem.

[196] In this regard, the HCJ had considered ss 84, 85 and 86 of the Penal Code which relates to unsoundness of mind and intoxication.

[197] In any event the HCJ stated that he could not find any evidence at the end of the prosecution case to indicate that the appellant was insane due to intoxication at the time of the offence.

[198] We see no reason to interfere with this finding by the HCJ. We also add that the trite principle that these were findings of fact based upon the HCJ's audio visual advantage of the witnesses and the equally trite principle that these are matters on which we as an appellate court would not lightly interfere with.

Exception to s 300 (provocation)

[199] The HCJ further considered the defence of provocation that was raised. The alleged provocation was that the appellant had been provoked by SP19 when SP19 had purportedly spread rumours that the appellant was having an incestuous relationship with his mother.

[200] The other reason for the provocation was that SP19 had cheated the appellant of wages due to him. It was also suggested by counsel that the appellant was angry at SP19 because he told the appellant that he had unnatural sex with SP17.

A **[201]** In the event, the HCJ stated that provocation must be grave and sudden and he found on the evidence that there was no provocation.

[202] We agree with the findings of the HCJ and see no reason to interfere with it.

B

Finding of prima facie case

[203] The HCJ after conducting a maximum evaluation of the evidence, held that the prosecution had made out a prima facie case against the appellant in respect of all the charges under s 302 of the Penal Code against him.

C

[204] The HCJ had further in his grounds stated that the prosecution had adduced credible evidence proving each ingredient of the offence in each of the three charges which if unrebutted or unexplained would warrant a conviction.

D

[205] The HCJ therefore called upon the appellant to enter his defence on all of the charges under s 302 of the Penal Code.

E **[206]** Upon a consideration of all the evidence and with the benefit of audio-visual advantage accorded to the HCJ, we find that he was correct in his finding that the prosecution had successfully made out a prima facie case against the appellant in respect of all the charges under s 302 of the Penal Code.

F

Defence case

[207] After the three alternatives were read to the appellant, he elected to give an unsworn statement from the dock in the form of reading out a statement in court. The other witness called for the defence was Dr Ian Lloyd Anthony (SD2).

G

[208] In summary, the unsworn statement of the appellant was that in the course of his work he used a parang which was always tied to his waist for convenience.

H

[209] The appellant stated that he first started working with SP19 around 2017. SP19 taught the appellant to smoke drugs like syabu, five and ganja (cannabis).

I

[210] The appellant stated that he took drugs as it prevented him from getting tired while working. He said that he took ganja as it made him feel relaxed. He took these drugs day and night from 2017 onwards. He also stated that he sometimes heard whispers in his ear.

[211] The appellant stated that he began the day on 17 May 2018 by buying breakfast for his mother after which he fed his cows. At about 10am he went to SP19's house. **A**

[212] They then proceeded to Pak Andak's oil palm plantation on SP19's motorcycle to work. All along the way to work he was venting to SP19 his frustration and how disappointed he was about work-related matters. **B**

[213] The appellant said that SP19 was dishonest and had cheated him of his wages in respect of work carried out together. Every time he questioned SP19 about work SP19 would give a distorted story. He also complained that SP19 took a long time to prepare for work and he had to wait long for SP19 outside SP19's house. **C**

[214] The appellant stated that upon reaching Pak Andak's plantation SP19 gave him a new drug to forget about his dissatisfaction about work. **D**

[215]]SP19 told him it was good stuff (*barang baik*). SP19 told the appellant that he, the appellant was confused and the new drug would calm him down. According to the appellant the new drug was different. After taking the drug he and SP19 started to do their work. The appellant then felt unwell and asked SP19 to send him home. **E**

[216] On reaching his home the appellant laid on a swing and thought about things which made him feel dissatisfied with SP19. Apart from SP19 cheating him of his wages he was also disappointed that SP19 had told him that he had unnatural sex with SP17 which was against the religion of Islam. **F**

[217] He was also offended that SP19 had accused him of having an incestuous relationship with his mother. **G**

[218] The appellant said that he then fell asleep and did not know what happened after that. He only knew that he was arrested by the police and that they said he had killed a few people, namely SP19's children. **H**

[219] The appellant said in his statement that he did not have any intention nor planned to kill SP19's children. They had nothing to do with the matter between him and S019. He did not know or realise what had happened until after he woke up from his sleep. **I**

[220] The second witness, SD2 was the Consultant Forensic Psychiatrist, Hospital Bahagia Ulu Kinta, Tanjung Rambutan whom the HCJ found to be an expert.

A **[221]** Pursuant to a court order dated 25 March 2019 it was ordered that the appellant undergo observation at the Hospital Bahagia Ulu Kinta under s 342 of the Criminal Procedure Code.

B **[222]** SD2 had also interviewed members of the accused family namely his mother, brother and uncle at his home. These interviews consisted of a detailed psychiatric evaluation, ward observation and CCTV observation in the ward.

C **[223]** After the period of observation of the appellant, SD2 made a report as to his findings (P111).

[224] In his testimony SD2 said that the appellant did not have any history of psychiatric illness prior to his admission to Hospital Bahagia Ulu Kinta.

D **[225]** In his report SD2 stated that the appellant was fit to plead and that the accused was sane at the time of the commission of the offences and that he knew the consequences of his actions and could know what he was doing was wrong and against the law.

E **[226]** SD2 found that the appellant had been abusing three types of drugs namely 'methamphetamine and erarnine, nimetazepam'. SD2 also said that the accused had been using cannabis since his teensand methamphetamine since 2010.

F **[227]** SD2 explained that if a person takes a particular amount of drugs he can maintain his three areas of functioning, namely cognition, coordination and speech. However, if he took an excess of the drug he would go into a state of intoxication.

G **[228]** Because of this his cognitive capacity would be affected. On the other hand if he stopped taking the drug and go into a state of substance withdrawal, this too would affect his cognitive capacity.

H **[229]** In referring to the appellant, SD2 was of the opinion that he did not think the substance abuse or his substance dependence had affected his mental faculties at the time of the offences.

I **[230]** SD2 agreed with the DPP that this meant the appellant's faculties to choose between right and wrong was intact.

[231] SD2 was also of the opinion that from his observation the appellant never experienced any psychotic phenomena. This piece of evidence was adequately considered by the HCJ as evident in his grounds of judgment.

[232] The defence raised by the appellant was insanity due to substance intoxication.

[233] The argument by the defence is that if blood samples had been taken within the 'window period' methamphetamine and erarnine, nimetazepam would have been detected.

[234] This, the defence argued, had created a reasonable doubt in the prosecution case as to the sanity of the appellant at the time the offences were committed.

[235] Upon hearing the statement of the appellant from the dock, the HCJ proceeded to evaluate the said evidence. The HCJ correctly recognised the evidential value of an unsworn statement and referred to the case of *Rewang bin Tempe v Public Prosecutor* [2016] 3 MLJ 586; [2016] 1 LNS 223 as follows:

> In *Dato' Seri Anwar Ibrahim v Public Prosecutor & Another Appeal* [2015] 2 MLJ 293; [2015] 2 CLJ 145 the Federal Court observed at p 199 as follows:
>
> > In law, a trial judge will not give much weight to what an accused has said in his unsworn statement as he is not subject to cross-examination by the prosecution nor can he be questioned by the trial judge ...

[236] The HCJ found that the appellant did not deny his actions in respect of the charges against him. The HCJ observed that the sole line of defence taken by the appellant at the defence stage was intoxication leading to insanity.

[237] The HCJ observed that the thrust of his defence was that the appellant does not remember anything after taking the drug given by SP19 and later fell asleep. It was only after he woke up that he was told that he had killed the three deceased.

[238] The HCJ considered the defence raised and gave his reasons for rejecting the defence.

[239] The HCJ said that firstly, there was no evidence that SP19 had in fact given the appellant any drugs or that the appellant consumed drugs on the morning of 17 May 2018 apart from what was stated in the accused's statement in the dock.

[240] The HCJ said that in fact, SP19 denied that he met the appellant that morning at all. SP19 did not want to go to work as it was the first day of the fasting month and he wanted to breakfast with his children.

A **[241]** Secondly the HCJ pointed out that only the active ingredient of cannabis was detected in the appellant's blood sample and even then, it was in such a small amount that it would not have any effect on the behaviour of a person.

B **[242]** Thirdly, the HCJ said that the evidence of SP15 and SD 2 was that the effect of these drugs may vary substantially with different people.

[243] The HCJ concluded that even if these drugs were detected in the blood of the appellant, which in this case none were, that would not be a determinant C factor that he was in a state of intoxication.

[244] The HCJ then went on to consider the behavior and conduct of the appellant in relation to the defence raised.

D

[245] The HCJ amongst others considered that prior to the incidents the appellant was capable of riding a motorcycle. He went to the Jumbo and attacked SP20 and SP21. Before injuring SP21 with the parang he would have recognised her as the daughter of SP19.

E

[246] The HCJ said that the appellant then rode the motorcycle to SP21's house. At the time of trying to gain entry into the house he gestured in a threatening manner with the parang when asked why he was behaving in such a way.

F

[247] The HCJ in evaluating the evidence said that the appellant had broken part of the door and had the cognitive ability to put his hands through the break in the door to open the door from the inside.

G

[248] Once inside he could recognise SP17 and her mother and could converse with them. He was angry that he could not find SP19 in the house. He told SP17 that her husband was useless and he wanted to eliminate SP17 and the descendants of her husband.

H

[249] He told SP17's mother not to interfere. The HCJ said that following this he came to the conclusion that the appellant's sole reason in gaining entry into the house was to confront SP19. Failing to find SP19 he vented his anger towards his wife and his offspring, namely the three deceased.

I

[250] The HCJ said that in this respect he knew exactly who SP19's descendants were. The HCJ also observed that it assumed some significance that the appellant did not harm SP17's mother despite her telling him to stop attacking SP17.

[251] The HCJ said that the appellant then pointed to the body of the second deceased and said 'yang ini sudah mampus dah'. In saying this, the HCJ made the observation that the appellant recognised the consequences of his actions, namely that death would be the result.

[252] In his evidence the appellant said he was disturbed that SP19 told him that he had unnatural sex with SP17, which SP19 denied so telling him.

[253] The HCJ observed that this showed that the appellant could appreciate that unnatural sex was wrong from the point of view of religion. The HCJ concluded from this that the appellant was therefore able to appreciate between right and wrong.

[254] The HCJ in his grounds stated the appellant upon coming out of the house told SP25 that he had killed three people. This, the HCJ said showed the he was well aware of his actions and seemed to be gratified with what he had done.

[255] Moments later the appellant slashed SP23 in the face. He then ran away when he saw SP30 who was in police uniform. The appellant then resisted arrest indicating he knew what he had done was wrong.

[256] The HCJ concluded thus that the cumulative effect of the appellant's conduct prior to, during and after the incidents points to him knowing the nature of his actions and that it was wrong.

[257] The HCJ had stated that the appellant had placed the blame on SP19 for teaching him to smoke syabu, erarnine five and ganja.

[258] The HCJ however held that this was contrary to the findings of SD2 who instead found that the appellant had been using cannabis since his teens and methamphetamine since 2010.

[259] The fact that SD19 gave drugs or 'barang baik' to the appellant on the morning of 17 May 2018 was denied by SP19 who categorically denied that he met the accused that morning.

[260] The HCJ said that it was obvious that from the appellant's statement that he bore considerable resentment towards SP19. The appellant was upset with SP19 for allegedly cheating him out of his wages.

A **[261]** The HCJ also observed that the fact that SP19 had cheated him was persistently on the appellant's mind from the time he purportedly went to work on 17 May 2018 to the time he went to sleep in his house.

B **[262]** The HCJ further said that the other sources of resentment were that SP19 allegedly spread rumours of his incestuous relationship with his mother and that SP19 was having unnatural sex with SP17, all of which was denied by SP19.

C **[263]** The appellant's contention was that all this was on his mind when he went to sleep and could not remember anything thereafter. The HCJ however stated that this contention by the appellant cannot hold true.

D **[264]** The HCJ went on to state several reasons in coming to this finding principally by alluding to the testimony of SD2. The HCJ said that SD2 found that the appellant was orientated to time place and person and that his memory was intact.

E **[265]** The appellant was able to tell SD2 when the offences were committed and was even able to recognise people he met on that day.SD2 concluded the appellant was able to recall details pertaining to the offences 'quite clearly' and also found that his motor coordination was not like one who was intoxicated.

F **[266]** SD2 also found that the appellant could articulate words that he had uttered during the course of the events on 17 May 2018. SD2 found that the 'capacity of the appellant to recall information or his memory was intact'.

G **[267]** The HCJ concluded thus that it was abundantly clear from the evidence of SD2 that the appellant did not experience any substance induced disorder and did not experience hallucinations or delusions in relation to substance abuse.

H **[268]** The HCJ stated therefore that what the appellant stated in his statement that 'Kadang-kadang saya ada mendengar bisikan-bisikan halus di telinga saya' also could not be true.

I **[269]** We unanimously also find as did the HCJ, that from the evidence as reflected in the notes of proceedings, the appellant was not under substance intoxication at the time the offences were committed.

[270] We also find that the evidence of SD2 supports the contention of the prosecution that the appellant knew the nature of his actions and knew they were wrong at the material time.

[271] Based upon a perusal of the evidence we similarly find that the appellant had failed to raise to raise medical insanity and legal insanity. We further find that the appellant had failed to establish the defence of intoxication under sub-s 85(2)(b) of the Penal Code on balance of probabilities.

[272] The HCJ also considered the defence of provocation and found that the defence of grave and sudden provocation is not available to the appellant in the circumstances of this case as there was no evidence that the provocation was 'grave and sudden'.

[273] The HCJ had also considered the other exceptions in s 300 of the Penal Code and found that none applied. He also said that s 86(2) of the Penal Code was not applicable here as he found that the appellant had failed to prove 'intoxication' in the first place.

[274] The HCJ concluded that based upon the evidence, he gave very little weight to the appellant's unsworn statement.

[275] The HCJ having considered all the evidence in this case, found that the prosecution had proved their case beyond reasonable doubt for each of all the charges against the appellant under s 302 Penal Code and the defence had failed to raise a reasonable doubt in each of the charges under s 302 of the Penal Code.

[276] We find that the HCJ had carefully considered and analysed the main defence of legal insanity raised by the defence. We find that the HCJ in so doing had referred to all the evidence adduced during the trial and in particular to the expert evidence of SD2.

[277] SD2, the psychiatric expert, had in his testimony said that the appellant knew about the effects of the medication and knew the nature of his actions and that it was wrong.

[278] We therefore find that the defence of legal insanity raised to be without merit.

[279] Having perused the evidence from the notes of proceedings available and having considered the HCJ's grounds of judgment, we find that the HCJ had not committed any appealable error to warrant any interference with the conviction. In all the circumstances of the case, we find the conviction in respect of all the charges against the appellant under s 302 of the Penal Code to be safe.

[280] We therefore uphold the conviction and dismiss the appeal against conviction on all the charges under s 302 of the Penal Code.

[281] The HCJ sentenced the appellant in Case No AA-458–2–02 of 2019 as follows:

> First Charge: Mandatory death sentence under section 302 Penal Code. To be hung by the neck till dead in accordance with section 277 Criminal Procedure Code.
>
> Second Charge: Mandatory death sentence under section 302 Penal Code. To be hung by the neck till dead in accordance with section 277 Criminal Procedure Code.
>
> Third Charge: Mandatory death sentence under section 302 Penal Code. To be hung by the neck till dead in accordance with section 277 Criminal Procedure Code.

[282] We considered the mitigating factors advanced by learned counsel for the defence and the submission that the death penalty should be set aside and replaced with a term of imprisonment of 30 to 40 years following the amendment pursuant to the Abolition of Mandatory Death Penalty Act 2023.

[283] We however declined to exercise our discretion in light of the fact that the lives of three young children have been cruelly cut short by the viscous and savage act of the appellant.

[284] In this respect, we considered the public interest element that the lives of three innocent children were extinguished in such a cruel fashion.

[285] We therefore found that there was no reasonable ground to exercise our discretion and accordingly declined to do so in the circumstances of the case.

[286] We thus dismissed the appeal against sentence and affirmed the sentences of death passed upon the appellant.

Conviction upheld; appeal against conviction and sentence dismissed.

Reported by Dzulqarnain Ab Fatar